

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

Anita Blake,

Plaintiff,

vs.

Oliver Adjustment Company, Inc.,

Defendant

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Civil Action File No.:

**COMPLAINT WITH
JURY TRIAL DEMAND**

PRELIMINARY STATEMENT

This action for damages is based upon the Defendant's overt and intentional, unlawful conduct in the furtherance of its efforts to collect a consumer debt. The Defendant's conduct is in violation of the Fair Debt Collection Practices Act (FDCPA), 15 U.S.C. § 1692 et seq. and the Georgia Fair Business Practices Act, (GFBPA) O.C.G.A. 10-1-390 et seq.

PARTIES

1. Plaintiff, Anita Blake, is a natural person who resides in Fulton County, Georgia.

2. Defendant, Oliver Adjustment Company, Inc., is a foreign corporation registered to do business in Georgia. Defendant may be served with process via its

registered agent, CT Corporation System at 289 S. Culver St, Lawrenceville, GA, 30046.

JURISDICTION AND VENUE

3. This Court has federal question jurisdiction over Plaintiff's Fair Debt Collection Practices Act ("FDCPA"), 15 U.S.C. § 1692, et seq., claims pursuant to 28 U.S.C. § 1331 and 15 U.S.C. § 1692k(d). This Court has supplemental jurisdiction over Plaintiff's state law claims pursuant to 28 U.S.C. § 1367.

4. This Court has personal jurisdiction over Defendant because, inter alia, Defendants frequently and routinely conducts business in the State of Georgia, including the conduct complained of herein.

5. Pursuant to 28 U.S.C. § 1391, venue is proper in the Northern District of Georgia because a substantial part of the events or omissions giving rise to the claims occurred in this district.

6. Venue is proper in the Atlanta Division because the conduct complained of herein occurred in Fulton County, Georgia.

FACTUAL ALLEGATIONS

7. Plaintiff is a 42-year-old woman with deteriorating health. [The Plaintiff is suffering under the effects of "long COVID" as well as significant psychological issues.] She is disabled, unable to engage in competitive employment,

and is in the process of obtaining disability insurance benefits through the Social Security Administration.

8. Plaintiff is allegedly obligated to pay a consumer debt arising out of a deficiency arising out of medical services and is, therefore, a “consumer”, as that term is defined by 15 U.S.C. § 1692a(3).

9. Defendant is a collection agency specializing in the collection of consumer debt.

10. Defendant uses interstate commerce and/or mail in its business in the collection of consumer debts.

11. Defendant manages, and collects upon, thousands of consumer debt accounts annually.

12. Defendant is, therefore, a “debt collector” as that term is defined by 15 U.S.C. § 1692a(6).

13. The Plaintiff is extremely concerned about her credit report and has been reaching out to any creditors that are reporting accounts in collection.

14. In January, 2023, the Plaintiff obtained copies of her credit report as published by the three major bureaus, TransUnion, Experian and Equifax.

15. In reviewing that report, the Plaintiff discovered a tradeline being reported by the Defendant to TransUnion in the amount of \$89.00 that was classified

as both “in collection” and “charged off” that she did not recognize. On February 6, 2023, the Plaintiff initiated a call to the Defendant at the number reflected in its tradeline.

16. The Plaintiff was connected with an individual identifying themselves as an agent of the Defendant. After verifying the Plaintiff's identity, Defendant informed her that it was in fact collecting a bill in the amount of \$88.58 on behalf of Great Lakes Pathology. Moreover, Defendant informed her that the account dated back to 2019.

17. While the Defendant further advised the Plaintiff that she did not face the threat of litigation over this account, it would still be reported to her credit bureau for as long as the law allows. However, per the Defendant, a “new law” came into effect last year in July that requires any medical debt to be removed from the credit report once it is paid in full.

18. The Defendant was upon information and belief, referencing the negotiated compromise between the Consumer Finance Protection Board and the three major credit bureaus that provides that all medical debt, once paid, would be deleted from a consumer's credit report. However, the Defendant neglected to inform the Plaintiff that that same directive would result in all medical debt being

reported with a balance under \$500.00 to be removed from consumer credit reports beginning in March, 2023, whether paid or not.

19. This information is widely known in the collection and credit industry, and was obviously known by the Defendant in making its representations to the Plaintiff.

20. The Defendant clearly misled the Plaintiff by only giving her half of the information known to it and relevant to the Plaintiff regarding the new policies for reporting medical debt. Its purpose in doing so was to create a false sense of urgency in the Plaintiff and, regrettably, it succeeded in this endeavor.

21. Despite the precarious nature of her finances, the Plaintiff spent several weeks trying to raise \$88.00. This is no simple task when one is unable to engage in employment and is in fact disabled.

INJURIES-IN-FACT AND DAMAGES

22. The FDCPA provides consumers with statutorily created rights to be free from ‘being subjected to false, deceptive, unfair, or unconscionable means to collect a debt.’” *McCamis v. Servis One, Inc.*, No. 8:16-CV-1130-T-30AEP, 2016 U.S. Dist. LEXIS 99492 (M.D. Fla. July 29, 2016); *Church v. Accretive Health, Inc.*, 654 Fed. Appx. 990, 2016 U.S. App. LEXIS 12414, 2016 WL 3611543 (11th Cir. 2016).

23. An injury-in-fact sufficient to satisfy Article III standing requirements “may exist solely by virtue of statutes creating legal rights, the invasion of which creates standing.” *Church*, at 993, quoting *Havens Realty Corp. v. Coleman*, 455 U.S. 363, 373, 102 S. Ct. 1114, 71 L. Ed. 2d 214 (1982).

24. Violation of statutory rights are not a “hypothetical or uncertain” injury, but one “that Congress has elevated to the status of a legally cognizable injury through the FDCPA.” *McCamis*, at 4, citing *Church*, at 3.

25. As a result of the Defendant’s actions and/or omissions, Plaintiff has suffered actual damages, including but not limited to the following:

- a.) Being subjected to false, deceptive, and unfair debt collection practices;
- b.) Confusion related to the Defendant’s credit reporting practice that adversely impacted the Plaintiff’s ability to prioritize debt payments when they were possible;
- c.) Defendant’s false and misleading communications to leading credit reporting bureaus were akin to defamation of the Plaintiff resulting in subscribers to the credit reporting services receiving a false impression of Plaintiff’s credit worthiness and debt-to-income ratio;
- d.) Uncompensated time expended away from activities of daily living, to confer with counsel regarding the Defendant’s collection efforts;

e.) Anxiety and worry caused by concern that Plaintiff was “missing out” on a substantial settlement opportunity that would leave him subject to legal process. and,

CAUSES OF ACTION

COUNT I

VIOLATIONS OF THE FAIR DEBT COLLECTION PRACTICES ACT 15 U.S.C. § 1692 et. seq.

Violations of 15 U.S.C. § 1692e and its subparts

26. 15 U.S.C. § 1692e specifically prohibits the use of any false, deceptive, or misleading representations or means in connection with the collection of any debt.

27. The use of “or” in § 1692e means a representation violates the FDCPA if it is false or deceptive or misleading. *Bourff v. Rubin Lublin, LLC*, 674 F.3d 1238, 1241 (11th Cir. 2012).

28. “The FDCPA protects consumers from abusive and deceptive practices by debt collectors, and protects non-abusive debt collectors from competitive disadvantage. 15 U.S.C. § 1692(e). Section 1692e forbids the use of ‘any false, deceptive, or misleading representation or means’ in debt collection, and provides a non-exhaustive list of prohibited conduct.” *United States v. National Financial Servs.*, 98 F.3d 131, 135 (4th Cir. 1996).

29. “Violations of Section 1692e are viewed from the perspective of the “least sophisticated consumer.” *National Financial Servs.*, 98 F.3d at 135-36. “[E]valuating debt collection practices with an eye to the ‘least sophisticated consumer’ comports with basic consumer-protection principles.” *Id.* at 136. The purpose of that standard “is to ensure that the FDCPA protects all consumers, the gullible as well as the shrewd.” *Id.* at 136 quoting *Clomon v. Jackson*, 988 F.2d 1314, 1318 (2nd Cir. 1983). Indeed, its purpose is to protect “naive consumers” with a minimal understanding of personal finance and debt collection. *LeBlanc v. Unifund CCR Partners*, 601 F.3d 1185, 1194 (11th Cir. 2010) (per curiam).

30. Moreover, the least sophisticated consumer is not to be held to the same standard as a reasonably prudent consumer. The least sophisticated consumer, though not unreasonable, is “ignorant” and “unthinking,” “gullible,” and of “below-average sophistication or intelligence,” *Pinson v. JPMorgan Chase Bank, Nat’l Ass’n*, No. 16-17107, 2019 U.S. App. LEXIS 33662, at 12-13 (11th Cir. Nov. 12, 2019), quoting *Clomon v. Jackson*, 988 F.2d 1314, 1318 (2d Cir. 1993)

31. A false representation in connection with the collection of a debt is sufficient to violate the FDCPA, even if it is not alleged or proven to be misleading or deceptive.

32. Defendant's representations and false intimations that the account it was reporting would remain for as long as the law allows when it was in fact scheduled to be deleted by the credit reporting bureaus within the first few months of 2023 was objectively false and materially misleading, and a violation of 15 U.S.C. §§ 1692e, 1692e(2)(A) and 1692e(10).

Violations of 15 U.S.C. § 1692f and its subparts

33. The conduct of the Defendant as described herein was unfair and unconscionable. It preyed upon perceived lack of sophistication of the Plaintiff.

34. Defendant's conduct violated 15 U.S.C. § 1692f.

COUNT II

**VIOLATIONS OF THE GEORGIA FAIR BUSINESS PRACTICES ACT
O.C.G.A. § 10-1-390, et seq.**

35. Plaintiff incorporates by reference paragraphs 1 through 34 as though fully stated herein.

36. O.C.G.A. § 10-1-390 et seq is commonly known as the "Fair Business Practices Act of 1975" (the "GFBPA").

37. The purpose of the GFBPA, is to protect consumers from unfair and/or deceptive practices in the conduct of any trade or commerce in part or wholly in the state. O.C.G.A. § 10-1-391.

38. O.C.G.A. § 10-1-391 directs that the GFPBA is to be interpreted and applied liberally and in harmony with the Federal Trade Commission Act, 15 U.S.C. § 45(a)(1), which implements the FDCPA.

39. O.C.G.A. § 10-1-393(a) of the GFBPA broadly prohibits unfair and/or deceptive business practices.

40. Defendant intentionally engaged in unfair and deceptive business practices, as set forth herein, in an effort to collect a consumer debt.

41. Defendant's conduct has implications for the consuming public in general.

42. Defendant's conduct negatively impacts the consumer marketplace.

43. Upon information and belief, Defendant does not maintain a place of business in Georgia and has no assets in Georgia, thus relieving Plaintiffs of the Notice and Demand requirements of O.C.G.A. § 10-1-399(b).

44. As a result of Defendant's violations of O.C.G.A. § 10-1-393(a), Plaintiff is entitled to recover general damages pursuant to O.C.G.A. § 10-1-399(a).

45. As a result of Defendant's intentional violations of O.C.G.A. § 10-1-393(a), Plaintiff is entitled to recover exemplary damages pursuant to O.C.G.A. § 10-1-399(a).

46. As a result of Defendant's intentional violations of O.C.G.A. § 10-1-393(a), Plaintiff is entitled to recover treble damages pursuant to O.C.G.A. § 10-1-399(c).

47. Plaintiff is entitled to recover reasonable attorney's fees and expenses of litigation pursuant to O.C.G.A. § 10-1-399(d).

TRIAL BY JURY

48. Plaintiff is entitled to and hereby requests a trial by jury.

WHEREFORE, Plaintiff prays that judgment be entered against Defendant for:

- a.) Plaintiff's actual damages pursuant to 15 U.S.C. § 1692k(a)(1) and;
 - b.) Statutory damages pursuant to 15 U.S.C. § 1692k;
 - c.) General, exemplary, and treble damages pursuant to O.C.G.A. § 10-1-399(a) & (c);
 - d.) Civil penalties, pursuant to N.C. Gen. Stat. § 58-70-130(b);
- Reasonable attorney's fees and costs pursuant to 15 U.S.C. § 1692k and O.C.G.A. § 10-1-399(d);
- d) Reasonable attorney's fees and costs pursuant to 15 U.S.C. § 1692k(a)(3) and N.C. Gen. Stat. § 75-16.1; Tex. Fin. Code § 392.403(b); and

e) Such other and further relief as may be just and proper.

Respectfully submitted this 6th day of April, 2023.

BERRY & ASSOCIATES

/s/ Matthew T. Berry

Matthew T. Berry

Georgia Bar No.: 055663

matt@mattberry.com

2751 Buford Highway, Suite 600

Atlanta, GA 30324

Ph. (404) 235-3300

Fax (404) 235-3333

Plaintiff's Attorney